



## Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	62
<b>Virginia Administrative Code (VAC) citation</b>	18 VAC 62 -20
<b>Regulation title</b>	Fair Housing Board Certification Regulations
<b>Action title</b>	Promulgate new regulations
<b>Document preparation date</b>	June 17, 2004

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Preamble

*The APA (Code of Virginia § 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.*

- 1) Please explain why this is an “emergency situation” as described above.
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

1. This is an emergency situation pursuant to § 2.2-4011(ii) of the Code of Virginia. Chapter 575 of the Acts of the 2003 General Assembly, which was the result of SB 1102, requires regulations to be effective within 280 days of enactment.

2. The new regulation establishes an education-based certification program for persons subject to the Fair Housing Law who are involved in the business or activity of selling or renting dwellings.

**Legal basis**

*Other than the emergency authority described above, please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

Section 54.1-2344.D states “The Board shall have the power and duty to establish, by regulation, an education-based certification or registration program for persons subject to the Fair Housing Law who are involved in the business or activity of selling or renting dwellings. The Board shall have the authority to approve training courses and instructors in furtherance of the provisions of this chapter.” These regulations are mandatory to implement Chapter 575 of the Acts of the 2003 General Assembly.

**Purpose**

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

The new regulation establishes the qualifications for obtaining and renewing fair housing certification as well as the qualifications for proprietary schools, instructors and courses which are required to obtain the certification. The new regulation is necessary to implement Chapter 575 of the Acts of the 2003 General Assembly, which was a result of Senate Bill 1102. The goal of the new regulation is to establish an education-based certification program in accordance with the provisions of Senate Bill 1102.

**Substance**

*Please detail any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons why the regulation is essential to protect the health, safety, or welfare of Virginians. Delineate any potential issues that may need to be addressed as a permanent final regulation is developed.*

These regulations are necessary to implement Chapter 575 of the Acts of the 2003 General Assembly, which was a result of Senate Bill 1102, and to create the certification program therein

mandated to protect the health, welfare and safety of the public when dealing with persons certified by the Fair Housing Board.

The regulations provide:

- 1) Definitions of terms to be used in the regulations;
- 2) Entry standards for those seeking certification by the Fair Housing Board;
- 3) Renewal standards for certificate holders;
- 4) Standards of conduct; and
- 5) Requirements for courses, instructors and providers.

Other regulations which may be necessary will be considered.

The application and renewal fees set in the initial emergency regulations were too high which resulted in no applications being submitted. SB 1102 contains an enactment clause which states the Real Estate Board shall provide funding for the Fair Housing Board until such time as the Fair Housing Board is funded through the implementation of the certification and registration requirements authorized by the provisions of this act. By setting the fee at \$25.00, the Fair Housing Board will be able to generate funds to help support itself.

Following is the Economic Impact data provided in the concurrent proposed regulatory package setting the same fees for this program as contained in this additional emergency regulation. Note that these are additional emergency regulations which will expire on February 2, 2005.

**Summary:**

These are new regulations to establish an education based certification program for persons subject to the Fair Housing Law who are involved in the business or activity of selling or renting dwellings. These regulations are necessary to implement Chapter 575 of the Acts of Assembly of the 2003 General Assembly.

**Fiscal Impact:**

	FY 2004	FY 2005	FY2006	FY2007
Fund	NGF (0900)	NGF (0900)	NGF (0900)	NGF (0900)
Program/Subprogram	560 44	560 44	560 44	560 44

Impact of Regulatory Changes:				
One-Time Costs	0	0	0	0

Ongoing Costs	62,500	62,500	62,500	62,500
Total Fiscal Impact	62,500	62,500	62,500	62,500
FTE	0.00	0.00	0.00	0.00

**Description of Costs:**

One-Time: There are no one-time costs associated with the proposed regulations.

Ongoing: Direct costs resulting from the regulatory changes include program expenditures such as postage, printing, board member travel and per diem, and training. Legal services related to fair housing activities and costs associated with enforcement of fair housing laws will be charged to the new Fair Housing Board, but they do not represent new costs to the agency as a result of the regulatory changes, and are not included in the fiscal impact to the agency.

Cost to Localities: None anticipated.

**Description of Individuals, Businesses, or Other Entities Impacted:** The new regulations apply to persons subject to the Fair Housing Law who are in the business of selling or renting dwellings as defined in the chapter.

**Estimated Number of Regulators:** The Department expects to regulate approximately 35,000 individuals.

**Projected Cost to Regulators:** The registration fee will be \$25 per two-year period, for an annual cost of \$12.50 to the regulator.

**Financial Status and Projections  
Fair Housing**

Number of Regulators 35,000 estimated

**Estimated Fee Increases**

	<u>2002-04</u>	<u>2004-06</u>	<u>2006-08</u>	<u>2008-10</u>	<u>2010-12</u>
Beginning Cash Balance	0	0	40,128	0	18,635
Revenue	0	962,500	891,966	1,027,633	1,122,064
Expenditures	62,500	922,372	964,405	1,008,998	1,032,303
Balance / Deficit	-62,500	40,128	-32,311	18,635	108,396

Paid by Real Estate Board	62,500	0	32,311	0	0
Cash Balance	<u>0</u>	<u>40,128</u>	<u>0</u>	<u>18,635</u>	<u>108,396</u>

Registration Fee (per biennium) 25.00

Note: The legislation states that the Real Estate Board shall provide funding for the Fair Housing Board.

**Fair Housing Assumptions and Projections**

**Assumptions:**

Number of Licensees	35,000
Annual Increase in Licensees	5.5%
Renewal Rate	85.0%
New Application Rate	20.0%
License Fee (ap and renewal)	25
Direct Costs	62,500
Fair Housing Enforcement (0900)	340,000
Deficits will be paid by the Real Estate board until the Fair Housing Board becomes self-supporting around 2010	

**Financial Projections:**

	<u>YR 1</u>	<u>YR 2</u>	<u>YR 3</u>	<u>YR 4</u>
Number of Licensees	<u>35,000</u>	<u>36,750</u>	<u>38,588</u>	<u>40,517</u>
Revenue	<u>875,000</u>	<u>87,500</u>	<u>800,111</u>	<u>91,855</u>
Direct Costs	62,500	62,500	62,500	62,500
Legal Services Costs	53,586	53,586	53,586	53,586
Fair Housing Enforcement Costs	340,000	350,200	360,706	371,527
Total Expenditures	<u>456,086</u>	<u>466,286</u>	<u>476,792</u>	<u>487,613</u>

Number of Licensees	<u>YR 5</u>	<u>YR 6</u>	<u>YR 7</u>	<u>YR 8</u>
Revenue	<u>42,543</u>	<u>44,670</u>	<u>46,903</u>	<u>49,249</u>
Direct Costs	<u>921,277</u>	<u>106,357</u>	<u>1,006,667</u>	<u>115,397</u>
Legal Services Costs	62,500	62,500	62,500	62,500
Fair Housing Enforcement Costs	53,586	53,586	53,586	53,586
Total Expenditures	382,673	394,153	398,083	402,048
	<u>498,759</u>	<u>510,239</u>	<u>514,169</u>	<u>518,134</u>

	<u>Biennium 1</u>	<u>Biennium 2</u>	<u>Biennium 3</u>	<u>Biennium 4</u>
Cash Balance Biennial	0	40,128	0	18,635
Revenue Biennial	962,500	891,966	1,027,633	1,122,064
Expenditures	<u>922,372</u>	<u>964,405</u>	<u>1,008,998</u>	<u>1,032,303</u>
Balance / Deficit Paid by Real Estate Board	<u>40,128</u>	<u>-32,311</u>	<u>18,635</u>	<u>108,396</u>
	<u>0</u>	<u>-32,311</u>	<u>0</u>	<u>0</u>
Balance / Deficit	<u>40,128</u>	<u>0</u>	<u>18,635</u>	<u>108,396</u>

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale

**Alternatives**

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.*

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This is the initial regulation promulgation activity. Chapter 575 of the Acts of the 2003 General Assembly and the current Code of Virginia mandate the creation of these regulations.

No alternative have been identified to evaluate.

The Department of Professional and Occupational Regulation and the Fair Housing Board will carefully weigh all information coming into its possession as these regulations are being created with the objective of developing regulations which intrude as little as possible into the conduct of commerce by the regulated community and have the least adverse impact on the public.

### Family impact

*Please assess the impact of the emergency regulatory action on the institution of the family and family stability.*

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No impact on families in Virginia has been identified as resulting from the proposed regulations.